

**ORDINANCE NO. 837**

**AN ORDINANCE OF THE CITY OF BROOKSVILLE, FLORIDA, AMENDING THE CODE OF ORDINANCES OF THE CITY OF BROOKSVILLE, FLORIDA, CHAPTER 58, "OFFENSES AND MISCELLANEOUS PROVISIONS," BY ADDING ARTICLE III, "SYNTHETIC DRUGS"; PROHIBITING THE POSSESSION, SALE, OR MANUFACTURE OF SYNTHETIC DRUGS; PROVIDING A STATEMENT OF INTENT; PROVIDING FOR A TITLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR DETERMINATION OF A PRODUCT WHICH CONSTITUTES A SYNTHETIC DRUG; PROVIDING FOR PROHIBITED ACTS; PROVIDING FOR LABORATORY ANALYSIS; PROVIDING FOR ENFORCEMENT AND PENALTIES; PROVIDING FOR CONFLICTS OF LAW; PROVIDING FOR SEVERABILITY AND APPLICABILITY; PROVIDING FOR INCLUSION IN THE CITY OF BROOKSVILLE CODE OF ORDINANCES; PROVIDING FOR FILING OF THE ORDINANCE AND AN EFFECTIVE DATE; PROVIDING FOR AMENDMENT BY RESOLUTION.**

**WHEREAS**, the City of Brooksville, Florida is vested with home rule authority pursuant to Article VIII, Section 2(b) of the Constitution of the State of Florida and Chapter 166, Florida Statutes, to enact ordinances in order to protect the health, safety, and welfare of the City's citizens; and

**WHEREAS**, synthetic drugs are commonly marketed for sale to young adults and teenagers as a safe and legal alternative to marijuana or other controlled substance; and

**WHEREAS**, the City of Brooksville City Council has been advised by the City of Brooksville Police Chief of a significant increase in the use of synthetic drugs and substances in the City by young adults and teenagers; and

**WHEREAS**, synthetic cannabinoids, bath salts, and other dangerous chemicals, commonly referred to as synthetic drugs, are being added by producers and manufacturers to products in an effort to mimic the effects of illegal drugs when ingested into the human body; and

**WHEREAS**, due to the manner in which these substances are marketed, the manufacture or production of synthetic drugs is not regulated by the Federal Drug Administration; and

**WHEREAS**, due to the absence of FDA testing and regulation, the long term health effects of synthetic drug products are unknown, have not undergone human clinical testing, and their manufacturing and production process has no regulatory oversight; and

**WHEREAS**, synthetic drugs may be more potent and dangerous than the controlled substances they are designed to mimic due to the unapproved chemicals and chemical compounds contained in them; and

**WHEREAS**, ingestion of synthetic drugs has been known to produce undesired and dangerous side effects such as headaches, agitation, nausea, vomiting, hallucinations, loss of consciousness, elevated blood pressure, tremors, seizures, paranoid behavior, anxiety, increased heart rate, and even death; and

**WHEREAS**, according to the American Association of Poison Control Centers, exposure to, or ingestion of synthetic drugs resulted in 2,906 emergency medical calls to poison control centers across the United States in 2010, 6,959 calls in 2011, and 1,901 calls in the first three months of 2012; and

**WHEREAS**, the manufacture, sale, and use of synthetic drugs has become a major problem that is negatively affecting the health, safety, and welfare of the citizens of the City of Brooksville; and

**WHEREAS**, the State of Florida, in an attempt to curtail the marketing, sale, and consumption of synthetic drugs has added in Chapter 893, Florida Statutes, several dozen of the chemicals and chemical compounds used in the manufacture of synthetic drugs as controlled or prohibited substances; and

**WHEREAS**, it has been determined that the manufacturers and producers of synthetic drugs can slightly alter the molecular make-up of the chemicals or chemical compounds to avoid regulation under the state statutes; and

**WHEREAS**, due to the ease of making slight molecular alterations of these chemicals or chemical compounds, law enforcement agencies have found it extremely difficult to bring criminal charges against the manufacturers, producers, and marketers of synthetic drug products; and

**WHEREAS**, investigations by the City of Brooksville Police Department into the manufacture, marketing, sale, use, and consumption of synthetic drugs have proven to be lengthy, costly, and manpower intensive; and

**WHEREAS**, the City of Brooksville Police Department has indicated that continued enforcement of synthetic drugs under the state statutes has been, and will be, hampered merely by the slight changing of the molecular make-up or recipe of the chemicals or chemical compounds used in the manufacture of synthetic drugs in order to defeat law enforcement investigations; and

**WHEREAS**, it is not the intent of this ordinance to interfere with legitimate actions and conduct of individuals which are protected under the constitutions and laws of the United States and the State of Florida.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BROOKSVILLE, HERNANDO COUNTY, FLORIDA:**

**SECTION 1. INCORPORATION OF RECITALS.** The recitals above are acknowledged as true and correct and are incorporated herein as legislative findings of fact.

**SECTION 2. APPLICABILITY.** This ordinance shall apply to all incorporated and annexed areas of the City of Brooksville.

**SECTION 3. CODE OF ORDINANCES.** The Code of Ordinances of the City of Brooksville, Florida, Chapter 58, "Offenses and Miscellaneous Provisions," is hereby amended by including therein the following Article III, "Synthetic Drugs:"

## **CHAPTER 58. OFFENSES AND MISCELLANEOUS PROVISIONS**

### **ARTICLE III. SYNTHETIC DRUGS**

#### **Sec. 58-41. Title.**

This article shall be known and may be cited as the "City of Brooksville Synthetic Drug Ordinance."

**Sec. 58-42. Intent.**

It is the intent of the City of Brooksville City Council to protect the health, safety, and welfare of its citizens by prohibiting the possession, use, sale, and manufacture of synthetic substances as defined herein which, when consumed, mimic the effects of marijuana, narcotics, or other controlled substances.

**Sec. 58-43. Definitions.**

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

*Synthetic Chemical or Synthetic Chemical Compound* refers to a chemical or chemical compound whose molecular make up is similar to those substances listed as controlled substances in Chapter 893, Florida Statutes, and whose intended primary use when introduced into the human body is to mimic the effects of a controlled substance.

*Synthetic Drugs* means both "synthetic cannabinoids" and "bath salts" as defined in this ordinance.

*Synthetic Cannabinoids* means any herbal or plant material which has been soaked, sprayed, or otherwise enhanced with a synthetic chemical or synthetic chemical compound that enables the herbal or plant material, or the smoke emitted from its burning, to mimic or simulate the effects of a controlled substance when inhaled, ingested, or otherwise introduced into the human body. Any herbal or plant material described above shall be considered a synthetic cannabinoid regardless of the labeling posted on the packaging for the material and regardless of whether the labeling states that its contents are "not for human consumption", "not for smoking", or contains some other similar statement. The fact that a herbal or plant material, packaged and advertised as a food additive, plant food, insect repellent, potpourri, incense, etc..., has been soaked, sprayed, or otherwise enhanced with a synthetic chemical or synthetic chemical compound which has no legitimate relation to the advertised use of the product may be considered in determining whether the product is considered a synthetic cannabinoid. This term specifically does not include any herbal or plant material containing synthetic chemicals or chemical compounds which: (1) require a prescription; (2) are approved by the United States Food and Drug Administration; and (3) are dispensed in accordance with Florida and federal law.

*Bath Salts* means any granular, powdered, stick, or block material which has been treated, or otherwise enhanced with a synthetic chemical or synthetic chemical compound that enables the material, or the smoke emitted from its burning, to mimic or simulate the effects of a narcotic or other controlled substance when inhaled, ingested, or otherwise introduced into the human body. Any material described above shall be considered a synthetic drug regardless of the labeling posted on the packaging for the material and regardless of whether the labeling states that its contents are "not for human consumption", "not for smoking", or contains some other similar statement. The fact that a material, packaged and advertised as a cleaning agent, food additive, therapeutic bath crystals, plant food, insect repellent potpourri, incense, etc..., has been soaked, sprayed, or otherwise enhanced with a synthetic chemical or synthetic chemical compound which has no legitimate relation to the advertised use of the product may be considered in determining whether the product is considered a synthetic drug. This term specifically does not include any material containing synthetic chemicals or chemical compounds which: (1) require a prescription; (2) are approved by the United States Food and Drug Administration; and (3) are dispensed in accordance with Florida and federal law.

*Controlled Substance* means any substance defined or listed in schedule I, II, III, or IV of section 893.03, Florida Statutes, as amended including any isomers, esters, ethers, salts, and salts of isomers, esters, and ethers of such substances.

**Sec. 58-44. Determination of a Product as a Synthetic Drug.**

The following factors, taken in the totality of the circumstances, may be considered in determining whether a product, substance, or other material should be classified as a synthetic drug. For the purposes of enforcement pursuant to section 58-47 of this article, the establishment of two or more of these factors shall constitute *prima facie* evidence that the product is a synthetic drug.

- A. Marketing: A product routinely advertised to be a substance for which it is rarely, if ever, suitable to be used for (i.e. – incense, potpourri, food additive, therapeutic bath crystals, plant food, insect repellent, iPod cleaner, glass cleaner, etc...).
- B. Sales Location: Products displayed and sold in businesses such as liquor stores, smoke shops, and gas/convenience stores where such advertised products are not typically sold.
- C. Labels and Packaging:
  - 1. Products marketed as common non-consumable products which contain warnings not normally found on such products. The warnings may be similar, but not limited to, "not for human consumption", "not for purchase by minors", etc..., or
  - 2. Products containing notices on the package not normally found on similar products such as, but not limited to, "does not contain any chemical compounds prohibited by state law", "contains no prohibited chemicals", "product is in accordance with State and Federal laws", "product is in compliance with new Florida Law HB 1175", "does not contain AM2201 or any DEA banned substance", "legal herbal substance", "100% compliant guaranteed", "100% chemical free", "100% synthetic free", etc....
  - 3. Products whose package labeling suggests the user will achieve a "high", euphoria, relaxation, mood enhancement, or that the product has other effects on the body.
- D. Price: The price of the advertised product is much more expensive than other products marketed in the City of Brooksville for the same or similar use.
- E. Misleading Directions: The product contains directions for the product's use, which is not consistent for the type of product advertised (Example: "Place caplet over door to enhance mood.").
- F. Similarity to Illicit Street Drugs:
  - 1. Products designed to make the substance appear similar to illicit street drugs (such as a white powder made to resemble cocaine, or an herbal substance dyed green to resemble marijuana); and/or
  - 2. Products advertised using brand names and packaging designed to make the product appear similar to illicit street drugs, or labeled with names similar to commonly used street slang for illicit drugs, which names or labeling has no relation to the advertised use of the product being sold. (Common brand names currently being used include, but are not limited to, "AK-47", "Aroma", "Atomic", "Aura", "Aurora Incense", "Barely In", "Black Mamba", "Black Rob", "Bliss", "Blizzard", "Blue Silk", "Bonzai Grow", "Boombay Blue", "Brain Storm", "Bullet", "Buzz", "California Dreams", "Charge Plus", "Charlie", "Chill X", "Chronic Spice", "Cloud 9", "Dank", "Daylights", "Dead Man Walking", "Demon", "Diable Botanical Incense", "Dragons Fire", "Drone", "D-ZL", "Earth Impact", "Earthquake", "Eight Balls", "Energy-I", "Euphoria", "Fake Weed", "Fuzzy Wuzzy", "G-13", "G-20", "Galaxy Gold", "Genie", "Grape Ape Herbal Incense", "Green Buddha", "Guerrilla Warfare", "Hayze", "Hypnotig", "Hurricane", "Hurricane Charlie", "Hush", "Ivory Wave", "Jazz", "Joker", "K-2", "K-3", "K-3 Legal", "Kryptonite", "Kush", "Kush Mania", "Lovely Dovey", "Lucid", "Lunar Wave", "Maddie", "Mad Hatter", "Makes

Scents", "Man of Steel", "Matrix", "Maui Wowie", "MCAT", "MDPV", "MDPK", "Meow Meow", "Meph", "Mind Trip", "Moon Rocks", "Mr. Happy", "Mr. and Mrs. Marley", "Mr. Nice Guy", "MTV", "Mystery", "Nightlights", "Ocean", "Ocean Blue", "Ocean Burst", "OMG", "O-Zone", "Peeve", "Pineapple Express", "Pixie Dust", "Posh", "Pot-Pourri", "Puff", "Pulse", "Pure Ivory", "Purple Haze", "Purple Wave", "PV", "Red Dove", "Scarface", "Scooby Snax", "Scope", "Sence", "Serenity", "Skunk", "Sky High", "Smoke", "Snow Leopard", "Solar Flare", "Soul Sence", "Space Truckin", "Spice", "Spice 99", "Spice Gold", "Spice Silver", "Stardust", "Stinger", "Sugar Sticks", "Supper Coke", "Three Monkey Incense", "Tiger Shark", "Vanilla Sky", "Voodoo", "Voodoo Child", "White Dove", "White Knight", "White Lightening", "Zohai", and a group of products marketed as from "The Spice Guy".)

- G. Ingredients: A product which has been enhanced with a synthetic chemical or synthetic chemical compound that has no legitimate relation to the advertised use of the product but mimics the effects of a controlled substance when the product, or the smoke from the burned product, is introduced into the human body.
- H. Verbal or Written Representations: Verbal or written representations made at the place of sale or display regarding the purpose, methods, use, or effect of the product.

#### **Sec. 58-45. Prohibited Acts**

- A. The possession, use, sale, distribution, production, or manufacture of synthetic drugs, as defined in this ordinance, is prohibited in the City of Brooksville.
- B. The display for sale or marketing of synthetic drugs, as defined in this ordinance, on retail store shelves is prohibited in the City of Brooksville.
- C. The advertisement of synthetic drugs, as defined in this ordinance, is prohibited in the City of Brooksville.
- D. The display for sale, marketing, advertisement, or other offer for sale of any product described in section 58-44 above is prohibited in the City of Brooksville.

#### **Sec. 58-46. Laboratory Analysis**

Any laboratory analysis of suspected synthetic drug products shall be conducted by a state certified private laboratory, competent to provide expert testimony in a court of law as to the chemical contents of the product and to the effect such contents may have if introduced into a human body. Upon the administrative determination of a violation, costs for such analysis and expert testimony shall be assessable against the person or entity charged with the violation.

#### **Sec. 58-47. Enforcement and Penalties**

Primary responsibility for the enforcement of this ordinance shall be with the City of Brooksville Police Department. Any law or code enforcement officer designated by the City is hereby empowered to initiate enforcement proceedings when, based upon personal investigation, the officer has reasonable cause to believe that the person has committed a violation of this provision. This ordinance may be enforced as a violation of the City of Brooksville Code of Ordinances pursuant to Article VIII, Section 8-1.5.G. of the City of Brooksville Land Development Code. For the purposes of enforcement of this ordinance, a separate code violation shall be considered to occur each day the original violation continues. This ordinance is enforceable against any natural person, business entity, trust, partnership, corporation, lessee, or property owner. Due to the dangerous medical and health effects the products prohibited by this ordinance can have on the user of the product, each violation shall be considered a serious threat to the public health, safety, and welfare of the citizens of the City of Brooksville.

**SECTION 4. CONFLICT WITH STATE LAW.** Nothing in this ordinance is intended to conflict with the provisions of the Florida Constitution or any Florida Statute. In the event of a direct and express conflict between this ordinance and either the Florida Constitution or the Florida Statutes, then the provisions of the Florida Constitution or Florida Statutes, as applicable, control.

**SECTION 5. SEVERABILITY.** If any section, subsection, sentence, clause, phrase, or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such holding shall not be construed to render the remaining provisions of this ordinance invalid or unconstitutional.

**SECTION 6. INCLUSION IN THE CITY OF BROOKSVILLE CODE.** The provisions of this ordinance shall be included and incorporated in the City of Brooksville Code of Ordinances, as an addition or amendment thereto, and shall be appropriately renumbered to conform to the uniform numbering system of the City of Brooksville Code of Ordinances.

**SECTION 7. FILING OF ORDINANCE AND EFFECTIVE DATE.** In accordance with the provisions of §166.041, Florida Statutes, governing city ordinances, a copy of this ordinance shall be recorded in a book kept for that purpose. This ordinance shall be effective upon adoption by the City Council of the City of Brooksville, Florida.

**SECTION 8. AMENDMENT BY RESOLUTION**

Section 58-44.F.2. of this article concerning common brand names used to market synthetic drugs may be amended by resolution of the City of Brooksville City Council.

CITY OF BROOKSVILLE

By: Lara Bradburn  
Lara Bradburn, Mayor

ATTEST: Janice L. Peters  
Janice L. Peters, CMC, City Clerk

PASSED on First Reading June 17, 2013  
NOTICE Published on June 21, 2013  
PASSED on Second & Final Reading July 1, 2013

APPROVED AS TO FORM FOR THE RELIANCE  
OF THE CITY OF BROOKSVILLE ONLY:

Thomas S. Hogan, Jr.  
Thomas S. Hogan, Jr., The Hogan Law Firm, LLC  
City Attorney

VOTE OF CITY COUNCIL

Bernardini	<u>AYE</u>
Bradburn	<u>AYE</u>
Burnett	<u>AYE</u>
Hohn	<u>AYE</u>
Johnston	<u>AYE</u>